

APPEAL NO. 041058  
FILED JUNE 24, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 28, 2004. The hearing officer determined that the independent review organization (IRO) decision is not supported by a preponderance of the evidence. The appellant (carrier) appealed this determination. The appeal file does not contain a response from the respondent (claimant).

DECISION

Affirmed.

It is undisputed that the claimant sustained a prior injury on \_\_\_\_\_, and a compensable injury on (subsequent date of injury). The medical evidence reflects that the claimant underwent four spinal surgeries at L5-S1, from December 1999, through April 2003, from the prior two injuries of 1999 and 2002. A Letter of Necessity dated November 20, 2003, from the claimant's treating doctor, Dr. K, states that the claimant has some bone growth around the left L4-5 facet joint and that is causing a painful "clicking" sensation in his back. Dr. K opined that although a rhizotomy at L4-5 had been denied by the carrier, another alternative is exploratory surgery at the L4-5 level on the left side to excise bony overgrowth around the L4-5 facet joint. Dr. K's recommendation is supported by Dr. M medical report dated July 30, 2003, in which he notes that after the claimant's spinal hardware was removed from L5-S1, he complained of "clicking" in his back that was very loud. Dr. M recommended rhizotomy surgery. The IRO decision dated March 30, 2004, states that the requested service(s) was "Exploration of L4-5 level on left with possible resection of bony overgrowth of L4-5 facet joint." The IRO doctor determined that there was "no objective studies confirming the left L4-5 facet joint as the pain generator site" and that the "documentation does not support the requested intervention is reasonable or medically necessary." The claimant testified that he has significant back pain and that he has a sensation that something is broken in his back.

Whether the IRO's decision was supported by a preponderance of the evidence was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In the instant case, the hearing officer determined that the treating doctor's medical report overcame the presumptive weight of the IRO decision to establish the medical necessity for the requested surgery. The carrier complains that the hearing officer mischaracterizes the evidence by commenting that the claimant had a prior fusion at the L4-5 level, rather than at L5-S1. We disagree. The hearing officer's Background Information specifically states that "The IRO doctor

does not address the Treating Doctor's specific request to explore the L4/5 level to determine whether the prior fusion is solid or not." We do not read "prior fusion" to reflect a fusion at L4-5, but rather a fusion at L5-S1 as noted in the medical evidence. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge